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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,660	07/22/2003	Paul T. Van Gompel	659-1143	7010
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BRINKS HOFER GILSON & LIONE			CRAIG, PAULA L	
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CHICAGO, IL 60610			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/624,660	Applicant(s) VAN GOMPEL ET AL.	
	Examiner Paula L. Craig	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/10/04 1/21/05</u> <u>4/3/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, Claims 1-16, in the reply filed on April 27, 2006 is acknowledged. New Claims 28-31 fall within Group I.

Claim Objections

2. Claim 30 is objected to because of the following informalities: For Claim 30, a period is required at the end of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 2, 7-9, 11-13, 15, 16, and 28 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent Application Publication No. 2002/0151864 A1 to Otsubo et al.

5. For Claim 1, Otsubo '864 teaches a method of manufacturing a disposable undergarment (Abstract, Figs. 6 and 9, and paragraphs 25-33 and 37-39). Otsubo teaches moving a web of body panel material in a longitudinal machine direction (Figs. 6 and 9 and paragraph 25). A cutout is formed in the web, and the web of body panel

material is cut along the longitudinal machine direction and thereby forms a rear body panel web and a front body panel web (a U-shaped section of material is cut out of one of the webs as the web is cut in the machine direction, Figs. 6 and 9 and paragraph 28). Otsubo teaches connecting a crotch member to each of the rear and front body panel webs, wherein the crotch member covers the cutout (Figs. 1-6 and 9 and paragraphs 29 and 33).

6. For Claim 28, Otsubo '864 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction (Abstract, Figs. 6 and 9, and paragraphs 25-33 and 37-39). A cutout is formed in the web, and the web of body panel material is cut along the longitudinal machine direction and thereby forms a rear body panel web and a front body panel web each having a cut terminal edge (Figs. 6 and 9 and paragraph 28). The cutout is located entirely in one of the front and rear body panel webs (Figs. 6 and 9). Otsubo teaches separating the front and rear body panel webs wherein the cut terminal edges of the front and rear body panels are spaced apart in a non-overlapping configuration and form a gap therebetween (Figs. 6 and 9 and paragraph 28). A crotch member is connected to each of the rear and front body panel webs, with the crotch member covering the cutout (Figs. 1-6 and 9 and paragraphs 29 and 33).

7. For Claim 2, Otsubo '864 teaches cutting the web such that the cutout is formed entirely in one of the front and rear body panel webs (Figs. 6 and 9).

8. For Claim 7, Otsubo '864 teaches cutting the web including forming first and second cut edges on the front and rear body panel webs respectively (Figs. 6 and 9). Otsubo teaches the first and second cut edges being substantially linear (Figs. 6 and 9).
9. For Claim 8, Otsubo '864 teaches the web having a body side surface and a garment side surface, and connecting the crotch member to each of the front and rear body panel webs includes connecting the crotch member to the garment side surface of each of the front and rear body panel webs (Figs. 6 and 9 and paragraph 29; note the claim does not require a direct connection).
10. For Claim 9, Otsubo '864 teaches the web having a body side surface and a garment side surface, and connecting the crotch member to each of the front and rear body panel webs includes connecting the crotch member to the body side surface of each of the front and rear body panel webs (Figs. 6 and 9 and paragraph 29).
11. For Claim 11, Otsubo '864 teaches forming the cutout and cutting the web of body panel material along the longitudinal machine direction simultaneously with a single cutting device (Figs. 6 and 9 and paragraph 28).
12. For Claim 12, Otsubo '864 teaches separating the front and rear body panel webs prior to connecting the crotch member thereto (Figs. 6 and 9 and paragraph 28).
13. For Claim 13, Otsubo '864 teaches a top sheet, a back sheet, and a retention portion disposed between the top sheet and the back sheet (Fig. 7 and paragraph 35).
14. For Claim 15, Otsubo '864 teaches the crotch member including a fold, and connecting the crotch member to the front and rear body panels includes connecting the fold to the front and rear body panels (Figs. 6 and 9 and paragraph 30).

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15. For Claim 16, Otsubo '864 teaches the crotch member including an elastic material (Fig. 1 and paragraph 21).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

18. Claims 3, 5, 6, 10, 14, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo '864 in view of U.S. Patent No. 6,264,641 to Van Gompel et al.

19. For Claim 3, Otsubo '864 teaches all the limitations of Claim 1, as described above in paragraph 5. Otsubo '864 does not teach cutting the web such that a portion of the cutout is formed in each of the front and rear body panel webs. Van Gompel '641 teaches an absorbent article having a portion of a cutout formed in each of the front and rear body panel webs (Figs. 3 and 4, col. 16, lines 20-30, and Claims 1-2). Van Gompel

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teaches a concave-inboard shape in which a portion of a cutout is formed in each of the front and rear body panel webs (Figs. 3 and 4 and col. 17, lines 17-28). Van Gompel teaches that having a concave-inboard shape helps provide an improved conformance of the body panel with the contours of the wearer's body (col. 17, lines 17-28). It would have been obvious to one of ordinary skill in the art to modify Otsubo '864 to include a portion of the cutout being formed in each of the front and rear body panel webs, as taught by Van Gompel '641, to provide an improved conformance of the body panel with the contours of the wearer's body, as taught by Van Gompel '641.

20. For Claim 30, Otsubo '864 teaches most of the limitations of this claim, as described above for Claim 1 in paragraph 5. Otsubo '864 teaches separating the front and rear body panel webs with the cut terminal edges of the front and rear body panels being spaced apart in a non-overlapping configuration and forming a gap therebetween (Figs. 6 and 9). Otsubo '864 does not teach a portion of a cutout being located in each of the front and rear body panel webs. Van Gompel '641 teaches a portion of a cutout being located in each of the front and rear body panel webs, as described above for Claim 3 in paragraph 19. It would have been obvious to one of ordinary skill in the art to modify Otsubo '864 to include a portion of a cutout being located in each of the front and rear body panel webs, for the same reasons as described above for Claim 3 in paragraph 19.

21. For Claim 5, Otsubo '864 does not teach the cutout having a substantially oval shape. Van Gompel '641 teaches the cutout having a substantially oval shape (Figs. 3 and 4). It would have been obvious to one of ordinary skill in the art to modify Otsubo

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'864 to include the cutout having a substantially oval shape, for the same reasons as described above for Claim 3 in paragraph 19.

22. For Claim 6, Otsubo '864 teaches cutting the web including forming first and second cut edges on the front and rear body panels respectively (Figs. 6 and 9).

Otsubo '864 does not teach the first and second cut edges being non-linear. Van Gompel '641 teaches a cutout having first and second edges which are non-linear. It would have been obvious to one of ordinary skill in the art to modify Otsubo '864 to include the first and second edges being non-linear, for the same reasons as described above for Claim 3 in paragraph 19.

23. For Claims 10, 14, 29, and 31, Otsubo '864 teaches that the elastics of the body panels may be applied stretched (paragraph 37). Otsubo '864 does not expressly teach stretching the web in the longitudinal direction prior to forming the cutout in the web.

However, stretching a web in various directions prior to cutting it is well known in the art of absorbent articles. Van Gompel '641 confirms this and teaches the use of a stretched layer as part of the web (col. 7, line 62 to col. 8, line 33, and col. 21, line 62 to col. 22, line 19). Van Gompel teaches that the use of such stretched layers provides improved fit, breathability, and more cloth-like properties (col. 2, lines 11-18, and col. 7, line 40 to col. 8, line 33). It would have been obvious to one of ordinary skill in the art to stretch the web in an appropriate direction prior to cutting it, as taught by Van Gompel, to provide improved fit, breathability, and cloth-like properties, as taught by Van Gompel.

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24. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo '864 in view of U.S. Patent No. 5,062,840 to Holt et al.

25. For Claim 4, Otsubo '864 does not teach a cutout having a substantially circular shape. However, circular cutouts are well known in the art. Holt confirms this and teaches a cutout having a substantially circular shape (anal opening 24, Fig. 6 and col. 3, lines 18-57). Holt teaches that the cutout allows fecal materials to be retained away from the child's body (col. 1, lines 58-65). It would have been obvious to one of ordinary skill in the art to modify Otsubo '864 to include a cutout having a substantially circular shape, as taught by Holt, to allow fecal materials to be retained away from the body, as taught by Holt.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 4,326,302 to Lowe et al., 4,834,737 to Khan, 5,037,413 to Haque, 5,383,867 to Klinger, 5,554,149 to O'Donnell, 5,555,847 to Kelly, 5,569,229 to Rogers, 6,395,955 to Roe et al. 6,527,756 to Mishima et al., and U.S. Patent Application Publication Nos. 2002/0151860 A1 to Klemp et al., 2003/0132549 A1 to Mlinar et al., and 2004/0210206 A1 to Coates show disposable undergarments with cutouts which may be circular, oval, or have other suitable shapes. U.S. Patent No. 4,965,122 to Morman shows a stretched web material. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig
Examiner
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